



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1175]

Certain Bone Cements and Bone Cement Accessories

Notice of Commission Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to affirm a final initial determination (“FID”) issued by the presiding administrative law judge (“ALJ”) finding that no violation of section 337 has occurred. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 23, 2019, the Commission instituted this investigation based on a complaint filed on behalf of Zimmer, Inc. and Zimmer US, Inc. both of Warsaw, Indiana (collectively, “Complainants”). 84 FR 49764 (Sept. 23, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on the importation or the sale within the United States of certain bone cements and bone cement accessories by reason of the misappropriation of trade secrets, false advertising, and tortious interference, the threat or effect of which is to destroy or

substantially injure an industry in the United States. The complaint also alleges the existence of a domestic industry. The Commission's notice of investigation names the following as respondents: Heraeus Medical GmbH of Wehrheim, Germany and Heraeus Medical LLC of Yardley, Pennsylvania (collectively, "Respondents"). *Id.* The Office of Unfair Import Investigations ("OUII") is named as a party in this investigation. *Id.*

On February 11, 2021, the ALJ issued the FID finding no violation of section 337. More particularly, the FID finds, *inter alia*, that: (1) the Commission has subject matter and personal jurisdiction; (2) Respondents imported or sold within the United States accused bone cements and bone cement accessories; (3) a domestic industry exists under section 337(a)(1)(A)(i) (19 U.S.C. 1337(a)(1)(A)(i)); (4) Complainants own the asserted trade secrets; (5) trade secrets ("TS") 10, 15, and 28 are protectable, but TS 11 is not protectable; (6) Respondents did not misappropriate any asserted TS; (7) Respondents did not engage in false advertising; (8) Respondents did not tortiously interfere with Complainants' contracts or prospective business relationships; and (9) Complainants failed to show a substantial injury or threat of injury to their domestic industry.

On February 23, 2021, Complainants filed a petition for review seeking review of most of the FID's findings. On March 3, 2021, Respondents and OUII filed responses to Complainants' petition.

On March 15, 2021, Respondents filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). Complainants and OUII did not file a statement on the public interest. The Commission received no submissions in response to its Federal Register notice calling for public interest comments. *See* 86 FR 12029-30 (Mar. 1, 2021).

On April 12, 2021, the Commission determined to review the FID in part and requested briefing from the parties on certain issues under review. 86 FR 20200-02 (Apr. 16, 2021). Specifically, the Commission determined to review the FID's findings and conclusions as to:

(1) the alleged misappropriation of TS 10, 15, and 28, including the finding that Respondents independently developed their own data compilation; (2) Respondents' alleged tortious interference with Complainants' prospective business advantages; and (3) domestic industry and injury. *Id.* The Commission also sought briefing from the parties, interested government agencies, and any other interested parties on remedy, bonding, and the public interest.

Having examined the record of this investigation, including the FID, Complainants' petition for review, the responses thereto, and the written submissions in response to the Commission's request for briefing, the Commission finds that no violation of section 337 has occurred. Specifically, the Commission affirms, with modified reasoning, the FID's findings that Respondents did not misappropriate any trade secret, did not engage in false advertising, and did not tortiously interfere with Complainants' prospective business relationships. The Commission has also determined to take no position regarding the FID's domestic industry and injury findings. The investigation is hereby terminated.

The Commission vote for this determination took place on June 23, 2021.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: June 23, 2021.

Lisa Barton,

Secretary to the Commission.

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